UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

DILLON ACQUISITION LLC, d/b/a
JOHN WIDDICOMB COMPANY

Employer

and Case GR-7-RD-3252

HERMAN SCHIEBOUT, An individual

Petitioner

and

JOHN WIDDICOMB WORKERS' UNION

Union

APPEARANCES:

Carl E. Ver Beek and Anthony R. Comden, Attorneys, of Grand Rapids, Michigan, for the Employer.
Herman Schiebout, pro se.
Thomas B. Cochrane, Attorney, of Muskegon, Michigan, for the Union.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, [1] the undersigned finds:

[1] The Employer and Union filed briefs, which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Employer, Dillon Acquisition LLC, doing business as the John Widdicomb Company, engages in the manufacture and non-retail sale of high quality household furniture at its Grand Rapids, Michigan plant. The Petitioner, Herman Schiebout, seeks a decertification election among about 78 employees within the production and maintenance employees unit. The Union contends that the petition is premature as the Union has not had a "reasonable time" during which to bargain with the Employer as a successor to John Widdicomb Company. The Employer and Petitioner contend that the petition is timely.

The Employer assumed ownership of the Grand Rapids plant from John Widdicomb Company on October 1, 1999. The purchaser, Bob Dillon, had previously been employed by the predecessor as its president. Immediately after the purchase, the Employer recognized as the exclusive collective bargaining representative of its production and maintenance employees, the John Widdicomb Workers' Union, an independent union that has existed at the plant for 58 years. The Employer did not adopt the collective bargaining agreement entered into by the Union and the predecessor, effective by its terms from January 27, 1997 to March 1, 2000.

The Employer and the Union met for their first bargaining session on October 28, 1999, and exchanged comprehensive contract proposals. The Employer and the Union reached agreement on ground rules, which included a rule that bargaining discussions and proposals were to be off the record and that meetings would be scheduled two sessions in advance. The parties agreed to negotiate non-economic issues first.

The Union's bargaining committee consisted of Local President Charles McDonald, Vice President John Goruso, Secretary Luanne Wheat, Trustee Carl Welch, Treasurer Ginger McCowan, and Attorney Tom Cochrane, the Union's legal counsel. The Employer's bargaining committee consisted of the Employer's Attorney Anthony Comden, Human Resource Director Sandra Lynn Boyer, and Human Resource Specialist

Misty Wilkinson. Cochrane, McDonald, and Boyer participated in previous collective bargaining negotiations between the Union and the predecessor. The same law firm that represented the predecessor in negotiations represented the Employer in the instant negotiations.

Beginning October 28, 1999, the parties met approximately 24 times for bargaining: November 18, December 2, and December 16, 1999; and January 13, January 20, January 27, February 10, March 2, March 9, March 20, March 26, April 13, April 17, April 24, April 27, May 4, May 8, May 15, May 18, June 1, July 6, July 18, and July 27, 2000. The meetings lasted an average of two hours, typically from 4 p.m. until 6 p.m. The Employer did not wish to meet during regular work hours, and several members of the Union bargaining committee had evening commitments that foreclosed longer sessions.

The record indicates that non-economic issues, other than the issues of union security and hours of work, were settled by March 21, 2000, when the Employer presented its first economic proposal. Throughout negotiations the Employer insisted that there would be no wage increase in the year 2000. On May 1, the Employer proposed that a federal mediator should be contacted to assist the parties, which the Union initially declined. In May, the parties reached agreement on disability pay, short-term disability insurance percentages, overtime rules, and holidays. Unresolved issues in May included wages, union security, vacation policy, and hours of work.

In apparent contravention of the ground rules, on about May 9 the Union distributed to its membership a leaflet that identified these unresolved issues. As to wages, the leaflet advised employees that the Employer's opening wage proposal had been to provide every employee a 10 cent increase for the next 3 years beginning January 1, 2001. According to the leaflet, the Employer had since increased its offer to 15 cents, with the possibility that employees could get an additional 15 cents a year based on periodic performance reviews.

During bargaining in May, the Union sought the assistance of the Carpenters Union in an effort to create support among the employees. A representative from the Carpenters attended at least one bargaining session and visited employees at home, which upset a number of employees. By early June, the Union's attorney informed the Employer's counsel that it was considering a strike.

In July 2000, at the Employer's insistence, the parties agreed to seek the assistance of a federal mediator. The mediator, Bill Gill, attended negotiating sessions on July 6, July 18, and July 27. As a prelude to the mediator's attendance at the July 6 session, the Union prepared a summary of outstanding issues, which included the four items unresolved since May: wages, union security, vacation policy, and hours of work. However, as to wages the Union advised the mediator that the issue was not settled only

because it had been packaged with union security. Otherwise, the Union indicated that it did not object to the Employer's "intentions" stated at the May 18 session to increase employees' pay by 20 cents a year for the next 3 years (60 cents), and to increase the employees' average hourly wage to 3% a year (9%).[2]

On July 18, the same day as the second bargaining session with the presence of the mediator, the Union posted in the plant and distributed a leaflet to its members that summarized the state of negotiations, referring to "a number of issues…still unresolved," including wages, vacations, hours of work, and union membership. The leaflet referred to the presence of a mediator as a means "to explore ways of compromising on the issues," but the mediator had informed the Union after meeting with the Employer that the Employer was "unwilling to compromise on ANY issue in ANY way." (Emphasis in original) The Union believed that Employer's refusal to compromise presented a "serious problem" in trying to reach an agreement and urged members that "[U]nless we show them we reject their proposals, we will be forced to take whatever it decides to give us." At hearing, Local President McDonald opined that the parties had made little progress on the four main issues between May and July 18.

Herman Shiebout filed the instant decertification petition on July 18, 2000, which the Employer received on July 19. Administrative notice is taken that the Region faxed the Union notice of the decertification petition on July 19.

After the filing of the instant petition, the Union and Employer met again on July 27 as previously scheduled. At this meeting, the Union indicated a willingness to accept the Employer's proposals on vacation, hours of work, and wages if the Employer would accept the Union's modified offer on union security. The Employer acquiesced to the union security proposal after the Union threatened that it would file an unfair labor practice charge alleging that the Employer was bargaining in bad faith regarding union security. As a result, the parties reached a tentative agreement on all unresolved issues at the July 27 bargaining session. However, the Union has not yet submitted the tentative agreement to the membership for ratification.

In order to balance the sometimes competing interests of employee freedom of choice and the necessity to promote sound and stable labor-management relations by encouraging the practice and procedure of collective bargaining, the Board holds that the "reasonable time" standard for bargaining is to be used when a successor recognizes an incumbent union but does not adopt the predecessor's collective bargaining agreement. "[T]he union is entitled to a reasonable period of bargaining without challenge to its

[2] The record is unclear as to when the Employer modified its wage proposal by testimony from Human Resource Director Boyer that at the July 18 bargaining session, which lasted from 4:00 p.m. to 9:15 p.m., the Employer offered to raise the average hourly raise from its prior proposal of 30 cents a year to 3%. This is obviously at odds with the Union's summary to the mediator that predates the July 18 session, to which I give greater weight based on the parties' stipulation for admission of the summary as a joint exhibit.

majority status through a decertification effort, an employer petition, or a rival petition." St. Elizabeth Manor Inc., 329 NLRB No. 36, slip op. at 4 (Sept. 30, 1999). As in the period after an employer has voluntarily recognized a union, the Board holds that, when there is a successorship, both parties are in "a stressful transitional period" because employees "have not had an opportunity to learn if the incumbent will be effective with the successor" and "anxiety about their status under the successor may lead to employee disaffection before the union has the opportunity to demonstrate its continued effectiveness." Id. at 3.

The Board's test for determining what is a reasonable period of time focuses on what has transpired during the time period under scrutiny rather than the length of time that has elapsed. The Board has considered various factors including whether the parties are bargaining for a first contract; whether the employer is engaged in meaningful good-faith negotiations over a substantial period of time; and whether an impasse in negotiations has been reached. MGM Grand Hotel, 329 NLRB No. 50, slip. op. at 3 (Sept. 30, 1999); King Soopers, Inc., 295 NLRB 35, 37 (1989) (footnotes omitted). The Board reviews whether the parties were making sufficient progress to warrant scheduling another session at the time that the petition was filed, whether proposals in writing were exchanged, and whether there was "substantial, gratifying momentum towards an agreement." Shangri-La Health Care Center, 288 NLRB 334, 338 (1988). The Board will not allow a petition to disrupt good-faith bargaining and negate fruitful negotiations where the parties' efforts are on the verge of reaching finality. Ford Center for Performing Arts, 328 NLRB No. 1 (April 7, 1998); N.J. MacDonald & Sons, Inc., 155 NLRB 67 (1965).

In applying this multifactor standard, the Board has found a reasonable bargaining period to encompass as few as 4 months and as many as 14 months of bargaining. Caterair International, 322 NLRB 64, 68 (1996); Masada Communications, 293 NLRB 931 (1989). By emphasizing that the duration of insulated bargaining depends primarily on what transpired during bargaining, the policy encourages parties to attend to the bargaining process, not to the calendar. On the other hand, the possibility that a reasonable bargaining period may be met with only a few months of good-faith bargaining lessens the limiting effect of this remedy on employee free choice. Caterair International, 322 NLRB at 68 (1996).

While it is unclear whether the parties were at impasse, the presence of a mediator at negotiations, the Union's consideration of a strike, and its enlistment of the Carpenters Union in negotiations support a finding that the parties were not close to reaching a final agreement at the time the instant decertification petition was filed. Further, the Union's belief as of July 18 that little progress had taken place in the last two and a half months of negotiations, and that the Employer was unwilling to compromise further on any issues, suggests that negotiations had reached the point where further progress was dependent upon a major concession by one of the parties. The Union's threat to file unfair labor

practice charges against the Employer evidently motivated the Employer to accept the Union's capitulation and proposed modification to the security union clause. Clearly, the parties had engaged in exhaustive and fruitful negotiations over a nine-month period without having been able to close the gap on four significant issues. The instant decertification petition did not disrupt fruitful negotiations but, rather, it appears to have been the catalyst that brought the parties together.

Furthermore, this is hardly a bargaining relationship between strangers. There was significant continuity in the identity of the participants on both sides of the bargaining table, and the Employer's new owner was admittedly familiar to the Union. Based on all of the evidence as summarized supra, I find that a reasonable period of time for bargaining had occurred at the time the petition was filed.

6. In view of the foregoing, the following employees in the currently recognized unit constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

> All factory hourly paid production and maintenance employees at the Employer's plants in the Grand Rapids area, excluding office clerical employees, factory clerical employees, professional employees, all engineering, production control, foremen and any other supervisory employees with authority to either hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 7th day of September, 2000.

(Seal) /s/William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226-2569

347-2067-6700

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

JOHN WIDDICOMB WORKERS' UNION

LIST OF VOTERS[3]

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **September 14, 2000.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570.** This request must be received by the Board in Washington by: **September 21, 2000.**

Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

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[3] If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.